

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT G. KEITH)	
Claimant)	
VS.)	
)	Docket Nos. 192,509;
ELEVENTH HOUR PERSONNEL)	193,247; 193,248
JERICO PLUMBING)	
DAILY SEPTIC SERVICE)	
Respondents)	
AND)	
)	
INSURANCE COMPANY OF NORTH AMERICA)	
CONTINENTAL WESTERN INSURANCE CO.)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent, Daily Septic Service, and its insurance carrier, Hartford Accident & Indemnity, appeal from a February 7, 1995, Preliminary Hearing Order by Administrative Law Judge Robert H. Foerschler.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction by ordering Daily Septic Service and its insurance carrier to provide medical treatment for claimant. Specifically, respondent raises the following issues for review:

- (1) Whether or not the employee suffered an accident or injury.
- (2) Whether the employee's injury arose out of and in the course of his employment.

- (3) Whether proper notice was given to employer, Daily Septic Service.
- (4) Whether a timely claim was made by the employee to Daily Septic Service.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant's current need for medical treatment is not the result of a personal injury by accident which arose out of and in the course of claimant's employment with respondent, Daily Septic Service.

Claimant relates the onset of his problems to his injury at Sandell Glass where he was assigned as a temporary worker while employed for respondent, Eleventh Hour Personnel. Claimant never received treatment for his alleged back problems. He did receive treatment through Eleventh Hour Personnel for a laceration to his right knee which occurred on August 16, 1993, but did not receive any treatment for his ongoing complaints of knee, leg and foot problems which included pain, swelling and numbness. Claimant testified that his problems have been constant since his injury. He also testified that certain types of activities aggravate his symptoms, especially climbing stairs and ladders, climbing on and off equipment, such as a backhoe, and even sitting. He has testified about incidents of aggravations both during his employment with the three respondent's named herein as well as when performing work for three or four of the other employers he has had since the initial injury. He also relates incidents of aggravation occurring away from work, at home and driving in his car.

Claimant is making claim against Eleventh Hour Personnel for his injury of August 16, 1993 with aggravation each and every day worked thereafter at Eleventh Hour Personnel, Daily Septic Service and Jerico Plumbing. He does not make claim against the other four or more employers for which he has worked since August of 1993. Claimant's testimony is confusing and at times contradictory. The Administrative Law Judge denied claimant benefits against the respondent's Eleventh Hour Personnel and Jerico Plumbing on several bases and the Appeals Board affirms that finding. We need not address each and every defense raised. It is sufficient that we find no timely written claim against respondent, Eleventh Hour Personnel, and no proper notice of injury to respondent, Jerico Plumbing.

The Appeals Board further finds that the claimant has failed to carry his burden of proof that he suffered accidental injury arising out of and in the course of his employment with Daily Septic Service. Claimant has not established that the right knee and back injuries, that he allegedly sustained while working for Eleventh Hour Personnel, were permanently aggravated during his employment with Daily Septic Service. Even if such an

aggravation did occur while employed at Daily Septic Service, the subsequent employments likely aggravated his conditions and could constitute subsequent intervening accidents. Claimant himself at one point testified that his work at Jerico Plumbing made his condition even worse than it had been at Daily Septic Service. Although he testified about aggravation of his symptoms while working at Daily Septic Service, claimant also testified that his problems were about the same at Daily Septic Service as they were when working at Eleventh Hour Personnel. The medical evidence presented by claimant in the form of records and the report of Gerald F. Belka, D.C. are similarly of little benefit in assessing liability against a specific employer. Dr. Belka likewise points to the onset of symptoms being during the employment with Eleventh Hour Personnel, with aggravations at Daily Septic Service and Jerico Plumbing. However, the nature and extent of those aggravations are not clear. It cannot be said from the evidence that claimant did in fact suffer a new accident or injury within the meaning of the Kansas Workers Compensation Act during his employment with either Daily Septic Service or Jerico Plumbing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 7, 1995, Order of Administrative Law Judge Robert H. Foerschler should be, and is hereby, affirmed with respect to respondents Eleventh Hour Personnel and Jerico Plumbing and is reversed as to respondent, Daily Septic Service.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Lawless, Overland Park, KS
Marcia Y. Sandgren, Kansas City, MO
C. Keith Sayler, Topeka, KS
Mark J. Hoffmeister, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director